

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,673
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision by the Office of Home Heating Fuel Assistance finding her ineligible for seasonal fuel heating benefits. The issue is whether the income of persons residing in her home who are not members of her family should be included in calculating her income eligibility.

FINDINGS OF FACT

1. The facts in this case are not in dispute. The petitioner and her seventeen year old son have as their sole source of income \$383 in ANFC benefits. (They also receive Food Stamps.) The petitioner rents a one bedroom apartment under an oral agreement in her name for which the rent is \$400 per month, which includes no utilities. She could find no cheaper housing and is on a waiting list for subsidized housing. In order to meet her housing expenses, the petitioner agreed to let two other adults who are not related to her live in her household. Those adults, who have full-time jobs, each pay one-third of the rent and the amount of the entire electric bill (which runs about \$70 per month) to the petitioner. The petitioner collects the money and then pays the landlord and the electric company herself.

The heating bill (natural gas which runs about \$60 per month) is paid entirely by the petitioner. The petitioner's landlord knows that she has taken in these two adults and has permitted the arrangement.

2. On July 29, 1998, the petitioner applied for heating fuel assistance. On the application the petitioner was asked to list not only her immediate family members but the names of anyone else living in her home, including roomers and boarders. The petitioner was later asked to provide income figures for the two other adults residing in her apartment. She did provide those income figures which totalled \$2,472 per month for the two working adults.

3. On September 16, 1998, the Office of Home Heating Fuel Assistance mailed the petitioner a notice informing her that her application would be denied because her income was more than that allowed for a household of four people. Her benefits were calculated as follows:

Gross Earned Income from the 2 Adults	+	\$2,472.00
20% Deduction from Earned Income	-	\$ 494.40
<u>Petitioner's ANFC Income</u>	<u>+</u>	<u>\$ 383.00</u>

Countable Net Income For Fuel	\$2,360.00
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The maximum fuel income for four persons for the fuel program is \$1,713. The petitioner was notified that as a result she was ineligible.¹

¹ In December of 1998, one of the petitioner's roommates moved out which resulted in a decrease in the group's income and an increase in the petitioner's personal expenses since she began to pay 2/3 of the rent and half the electric bill. She reapplied for fuel on the occurrence of this event but

ORDER

The decision of the Department is reversed and the matter is remanded to the Department to calculate the petitioner's eligibility as directed below.

REASONS

The Department denied the petitioner under a fuel program regulation which requires that the combined income and resources of "all members of the household" must be considered in determining eligibility for fuel assistance. W.A.M. § 2904. Household is defined in the regulations as follows:

Household

A household is defined as one or more persons living in a unit who share a primary heating source, regardless of:

the cost-sharing arrangement for living and heating expenses among those people, or

whether secondary heating sources are shared, or

the relationship of each person to other persons in the living unit.

W.A.M. 2901.1(4)

On September 11, 1998, just a few days before the

was denied because her application was too late for this heating season. That denial was upheld by the Board in Fair Hearing No. 15,821. For purposes of this appeal, the only relevant facts are those that existed before the filing deadline of November 30, 1998, for this season's fuel allotment. Those facts are set forth above.

petitioner was denied under the above regulation, the Vermont Supreme Court ruled that the regulation cited above defining household for the fuel assistance program was inconsistent with and violated the provisions found in the federal funding statute, the Low-Income Home Energy Assistance Act, 42 U.S.C. §§ 8621-8629. Dutton, Messier and Brown v. Department of Social Welfare, 9 Vt.L.W. 254 (1998),

Specifically, the Court held that the federal statute² required states to include persons in the same household only if they are "living together as one economic unit". The Court rejected the notion found in the Department's regulation that a group of persons can be considered an economic unit if they are merely sharing a common heating source or sharing a living unit with the associated expenses. Id., at 7. The Court concluded that Congress intended for states to "distinguish between people 'living together as one economic unit' and sharing heating facilities, and people merely residing at the same address and sharing heating facilities." Id., at 6. The meaning of "economic unit" adopted by the court was that "the common living expenses are shared from the income and resources of all members and that the basic needs of all members are

² The text of the federal statute defines household as "any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent." 42 U.S.C. § 8622(4).

provided without regard to their ability or willingness to contribute." Id., at 7, quoting the definition Knowles v. Butz, 358 F. Supp. 228, 231 (N.D. Cal. 1973). In the three consolidated cases before the Court, it was determined that two applicants who had lodgers living in their homes (including one lodger who was the son of the landlady) and an applicant lodger who lived in someone else's home did not live as "economic units" and thus could not be deemed "households" under the statutory scheme.

As set forth in the Supreme Court's decision, in order to determine whether the petitioner and the two adults who reside in her apartment are a "household", it is necessary to establish whether they pool their income and resources to meet their common expenses and basic needs. The evidence indicates that each of the two adults in the petitioner's household pay her \$133 per month for rent and that those two split the electric bill when it comes in (about \$35 each). The petitioner pays the heating bill (\$60) which benefits all the individuals. This arrangement requires the adults residing in the household to pay the petitioner a fixed rate for the rent and a relatively fixed rate for electricity and heat (although usage could cause fluctuations). There is no evidence that the parties pool their income or resources to pay any bills or that their sharing of expenses goes beyond anything except their common shelter. Each is responsible for his or her own clothing, food, medical, transportation

and other expenses. There is no evidence that the income of the two adults in the petitioner's household is available to her for any reason other than paying their fixed shelter expenses.³

The Department tries to distinguish these facts from the ones before the Court in Dutton by pointing out that the petitioner calls her adult residents "roommates", not "lodgers"; that the petitioner rents, and not owns, her living unit⁴; that the adults in this case do not have their own room (they appear to sleep in the living room); that the heating cost here is not included in the rent unlike the prior case; that the petitioner rents under an oral agreement; and that the cost-sharing agreement was oral between the parties. While these distinctions may indeed exist, they are distinctions that do not make a difference.

None of these is a factor considered by the court in determining whether a group should be considered a household. The touchstone for the Court is simply whether the individuals operate as an economic unit.

Given these facts, it must be concluded that the

³ The moneys which the petitioner actually receives from the two adults who reside in her household are most likely countable to her as income.

⁴ This is a curious argument given the fact, pointed out by the Court in Dutton (p. 3), that the federal statute prohibits states from conditioning assistance "on whether the household owns or rents the residence" and requires that states "treat owners and renters equitably." 42 U.S.C. § 8624(b)(8).

petitioner and the two unrelated adults who reside in her apartment are not an "economic unit" but are, as the Court put it "people merely residing at the same address and sharing heating facilities." As such, the two adults who were living in the petitioner's apartment are not members of her household and their income should not have been included in determining her eligibility. The matter is remanded to the Office of Home Heating Assistance to determine the petitioner's eligibility for fuel assistance based on her and her son's income alone.

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